

Remarks

In response to the Office Action dated January 6, 2009, Applicant respectfully requests reconsideration based on the following remarks. Applicant respectfully submits that the claims as presented are in condition for allowance.

Provisional Double Patenting Rejection

Claims 1-3, 7, 9-12, 16-18 and 20 stand provisionally rejected on the grounds of non-statutory obviousness-type double patenting as being un-patentable over claims 1-7, 11-12, 15-20 and 22-23 of co-pending Application No. 09/892,665. Application ‘665 was filed on the same day as this pending application. MPEP 804 I.B.1 indicates that the Examiner will determine the application that claims the base invention of the two and cancel the provisional rejection in that application. However, a provisional double patenting rejection has been maintained in both cases. For the convenience of the Examiner and to expedite prosecution, Applicants have elected to file a Terminal Disclaimer in this currently pending case, 09/892,664. Applicant does not concede to the merits of the double patenting rejection. The filing of the Terminal Disclaimer renders the provisional double patenting rejection moot in regards to both the ‘664 and ‘665 applications. Therefore, Applicant respectfully requests withdrawal of the double patenting rejection in regards to this pending application.

Allowable Subject Matter

The provisional non-statutory double patenting rejection is the only rejection pending in the application. Applicant submits that the filing of the Terminal Disclaimer renders the rejection moot. Therefore, all pending claims are allowable.

Conclusion

Applicant asserts that the application including claims 1-3, 7, 9-12, 16-18 and 20 are in condition for allowance. Applicant requests that a Notice of Allowability be provided. Should the Examiner have any questions or comments, the Examiner is invited to call the undersigned at the number listed below.

No fees are believed due. However, please charge any additional fees or credit any overpayment to Deposit Account No. 50-3025

Respectfully submitted,

Date: February 27, 2009

/Daniel J. Layden/

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